



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Attention:

Dear :

I am responding to your April 25, 2002, memorandum on behalf of your constituent, [REDACTED]. [REDACTED] is CFO of the [REDACTED]. Apparently, the [REDACTED] organization may be a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

[REDACTED] asks that the IRS issue guidelines to clarify whether gasoline that certain organizations purchase with credit cards issued by a credit card company under a contractual agreement with oil companies can be purchased at a price excluding the excise tax, thus relieving the organization of the need to file for a refund from the IRS. If the cards issued by a credit card company are not treated as oil company credit cards, gasoline purchases made with the cards would not benefit from the administrative rule in Notice 89-29 allowing oil companies to claim a refund when ultimate purchasers use oil company credit cards to purchase gasoline at a price excluding the excise tax.

In response to questions about the application of the rules in Notice 89-29, the IRS is considering proposing regulations under section 6416(a)(4) that, when finalized, would replace Notice 89-29. An advanced notice of proposed rulemaking (REG-143219-01) was published October 23, 2001, in the Federal Register (66 FR 53564). We received many comments on our notice and are considering them as part of the regulations process.

However, the exemption applies only to gasoline sold to the ultimate purchaser for an exempt purpose. Under section 6416(b)(2), exempt purpose includes exclusive use by a state or local government or a nonprofit educational organization.

Under the Internal Revenue Code, a section 501(c)(3) organization's tax exempt status applies only for income tax purposes. For gasoline excise tax purposes, section 6416(b)(2) exempts only the gasoline sold to nonprofit educational organizations.

An “educational organization” normally maintains a regular faculty and curriculum and a regularly enrolled student body in attendance at the place where its educational activities are regularly carried on. An “educational organization” also includes a school operated as an activity of a section 501(c)(3) organization, provided the primary function of the school is formal instruction, and the school normally maintains a regular faculty and curriculum and a regularly enrolled student body in attendance at the place where its educational activities are regularly carried on. [Treasury Regulations section 48.4221-6(b).] Thus, only those gasoline purchases of a § 501(c)(3) organization that are for the exclusive use of its educational organization would be exempt from the gasoline excise tax.

I hope this information is helpful. If you have any questions, please contact me at (202) 622-3000 or of my staff at (202) 622-3130.

Sincerely,

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)